Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Application of Sections 251(b)(4) and 224(f)(1)	)
Of the Communications Act of 1934, as amended,	)
To Central Office Facilities of	)
Incumbent Local Exchange Carriers	)

CC 01-77

PETITION FOR DECLARATORY RULING

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SUMMARY

In this petition for declaratory ruling, the Coalition of Competitive Fiber Providers requests that the Commission determine that competitive fiber providers may, pursuant to Sections 251(b)(4) and 224(f)(1) of the Act, extend fiber to CLECs collocated in ILEC central offices and place distribution frames in ILEC central offices. The Coalition is comprised of American Fiber Systems, Inc., Global Metro Networks, Ltd., Fiber Technologies, LLC, Telergy, Inc., and Telseon Carrier Services, Inc. A prompt consideration and grant of this petition would serve the goals of the Act by facilitating provision of competitive transport services and dark fiber to CLECs that, in turn, can lead to lower prices and greater service options to consumers.

Sections 251(b)(4) and 224(f)(1) of the Act require ILECs to offer telecommunications carriers nondiscriminatory access to "any" poles, ducts, conduits, or rights-of-way owned or controlled by ILECs. This right to nondiscriminatory access, including to any ILEC duct, conduit, or rights-of-way leading to, or in, ILEC central offices, is independent of any rights competitive fiber providers may have to collocate in ILEC central offices pursuant to Section 251(c)(6) of the Act. Moreover, interconnection or access to unbundled network elements is not a precondition under Sections 251(b)(4) and 224(f)(1) to access to ILEC central office duct, conduit, or rights-of-way. Similarly, CLECs collocated in ILEC central offices pursuant to section 251(c)(6) may use Sections 251(b)(4) and 251(b)(6) to cross-connect with other collocated CLECs irrespective of whatever additional rights they may have to do so under Section 251(c)(6).

The Commission's rules define "conduit"as a "structure" in which wires and cable may be installed. A "duct" is defined as a "raceway" which, in industry practice, refers to a channel

used for loosely holding electrical and telephone wires in buildings. These definitions are broad enough to encompass all wiring distribution systems used in ILEC central offices. The Commission should determine that any central office wiring distribution systems are duct or conduit within the meaning of the Commission's rules to which ILECs must offer nondiscriminatory access pursuant to Section 224(f)(1). The Commission should also determine that "defined pathways" used by ILECs to run wiring in central offices constitute rights-of-way that competitive fiber providers and other telecommunications carriers may access pursuant to section 224(f)(1).

As already permitted under Commission rules concerning attachments to ILEC duct, conduit, and rights-of-way generally, competitive fiber providers may include dark fiber as part of host attachments. In addition, consistent with current industry practice, the right of access to ILEC duct, conduit, and rights-of-way includes the right to install equipment that is associated with installation of wiring and cable such as connection devices, signal regenerators, and power supplies. The Commission should determine that competitive fiber providers may, pursuant to Section 224(f)(1), install connector blocks and distribution frames in ILEC central offices.

The Commission should grant this petition on an expedited basis.

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PETITION FOR DECLARATORY RULING

American Fiber Systems, Inc., Global Metro Networks, Ltd., Fiber Technologies, LLC., Telergy, Inc., and Telseon Carrier Services, Inc. ("the Coalition") pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, submit this petition for declaratory ruling requesting that the Commission determine that incumbent local exchange carriers ("ILECs"), pursuant to Sections 251(b)(4) and 224(f)(1) of the Communications Act of 1934, as amended ("the Act"), must provide to telecommunications carriers nondiscriminatory access to any "duct, conduit, or right-of-way owned or controlled by" an ILEC leading to, or located in, ILEC central offices.

I. THE COALITION

The Coalition is comprised of telecommunications carriers that provide, or will provide, advanced fiber-based transport services, including interoffice transport, and/or dark fiber to end users and other telecommunications carriers. Coalition members together offer these services and products in virtually every region of the "lower 48" states and the District of Columbia. Coalition members have obtained, or are in the process of obtaining, state certification and interconnection agreements with ILECs in the states in which they will operate.

One aspect of Coalition members' business plans is provision of competitive fiber-based transport services and dark fiber to competitive local exchange carriers ("CLECs") collocated in ILEC central offices. In this petition, the Coalition refers to telecommunications carriers that include in their business plans provision of fiber-based transport services and dark fiber to CLEC as competitive fiber providers ("CFPs"). To implement this aspect of their business plan, CFPs need to access CLECs at their collocation space in ILEC central offices. CFPs need to access the ILEC central office for the purpose of extending fiber into the central office and connecting with CLECs collocated there. CFPs also need to install active electronics in CLEC collocation space and to place a distribution frame in the central office to facilitate future requests from CLECs for provision of fiber-based distribution services. In this Petition for Declaratory Ruling, the Coalition seeks a determination from the Commission that CFPs may obtain this access to the ILEC central office necessary to implement this aspect of their respective business plans, pursuant to Sections 251(b)(4) and 224(f)(1) of the Act.

Coalition members together represent a total capital investment of approximately $1 billion.

American Fiber Systems, Inc. is based in Rochester, New York. It plans to offer CLECs, ISPs and other customers high-capacity dark fiber networks and fiber-based telecommunications services in metropolitan areas of second and third-tier cities in 41 states, such as St. Louis, Missouri, Kansas City, Kansas and Missouri, and Nashville, Tennessee. American Fiber Systems, Inc. is certificated in eleven states and currently has applications pending in six other states.

Fiber Technologies, LLC is a CFP also based in Rochester, New York. Fiber Technologies, LLC is in the process of deploying fiber networks throughout the New England

and mid-Atlantic regions. Fiber Technologies, LLC has commenced service in Albany, New York, expects to do so in Syracuse, Buffalo, and Rochester, New York in the first quarter of 2001, and plans to expand its service to additional cities in Massachusetts, Rhode Island, Connecticut, Ohio, Pennsylvania, and other states later in the year.

Global Metro Networks, Inc., based in Silver Spring, Maryland, is constructing local fiber networks in major markets throughout the United States and Europe which will be used to provide telecommunications services to other carriers, ISPs and other large enterprises. Global Metro Networks, Inc. is in the process of obtaining state certification and interconnection agreements with ILECs in a number of states. Global Metro is currently constructing its network in California, Texas, Florida, Georgia, Illinois, Virginia, Maryland, and Washington, D.C.

Telergy, Inc., through its operating subsidiaries, is a facilities-based provider of advanced optical network solutions in the northeastern United States and Canada. Telergy's "OpticalNet" suite of services is delivered over its network which integrates last-mile private network builds with local metropolitan rings and long distance telecommunications facilities. Telergy is building its network on contiguous rights-of-way in its region, primarily using access rights granted by major utility companies.

Telseon Carrier Services, Inc., headquartered in Englewood, Colorado, currently provides "managed gigabit" IP telecommunications services to customers in 20 major U.S. cities, including San Francisco, Los Angeles, New York, Washington, D.C., Chicago, and Dallas over fiber facilities. Telseon's services permit customers to manage and efficiently utilize the bandwidth capacity of fiber. Telseon is in the process of obtaining state certifications and interconnection agreements with ILECs in every state in which it operates.

II. DECLARATORY RELIEF IS WARRANTED

Section 1.2 of the Commission's Rules provides that "[t]he Commission may, in accordance with Section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."[1] As discussed, Coalition members need to access ILEC central offices for the purpose of providing service to CLECs collocated there. However, ILECs, with the exception of Verizon in former Bell Atlantic territory,[2] do not permit competitive fiber providers to do so. ILECs in the *Collocation Remand Proceeding*[3] contend that competitive fiber providers have no right to collocate in ILEC central offices under Section 251(c)(6) because they do not interconnect with the ILEC or access the UNEs of the ILEC.[4] ILECs do not permit CLECs generally, or competitive fiber providers in particular, to access poles, duct, conduit, or rights-of-way leading to, and in, ILEC central offices pursuant to Sections 251(b)(4) or 224(f)(1). SBC, for example, will only permit access to the "manhole" nearest to the central office.[5] Some ILEC interconnection agreements specifically exclude access to duct and conduit leading to, and in,

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1 47 C.F.R. Section 1.2.

2 Pursuant to its federal Competitive Alternate Transport Terminal ("CATT") tariff, Verizon in former Bell Atlantic territory permits CLECs and CFPs to extend fiber into the central office and place a distribution frame there. Verizon FCC Tariff No. 1, Section 19.10.3. Under the CATT tariff, Verizon provides a shared point within the central office at which a "competitive fiber provider can terminate its facilities for distribution to collocation arrangements within that central office." *Id.*

3 *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket. Nos. 98-147, 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further NPRM in CC Docket No. 96-97, FCC 00-297 (Aug. 10, 2000)("*Collocation Remand Proceeding*").

4 See Comments of SBC at 17; Comments of BellSouth at 7 (filed Oct. 12, 2000).

5 *See* Comments of Metromedia Fiber Network Services, Inc., CC Docket No. 00-217, filed November 15, 2000, at 5. *See also* Reply Brief of Southwestern Bell, CC Docket No. 00-217, filed December 11, 2000, at 88.

ILEC central offices. On the other hand, as explained in this petition, the access requested by the Coalition is required under the Act. Accordingly, there is both a controversy and uncertainty concerning rights of CFPs under Sections 251(b)(4) and 224(f)(1) to access ILEC facilities leading to, and in, ILEC central offices. The Commission should address, and grant, the instant petition in order to eliminate this controversy and uncertainty. In other instances, the Commission has granted petitions for declaratory ruling to resolve disagreements between parties and to avoid multiple single claims in the future.[6] For the same reasons, and because grant of the petition would facilitate provision of competitive transport services, grant of this petition would serve the public interest.

III. SECTIONS 251(b)(4) and 224 APPLY TO ILEC CENTRAL OFFICE FACILITIES

A. Section 224(f)(1) Applies to "Any" ILEC Facilities

Section 224 (f)(1) provides that a utility "shall provide . . . any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[7] (emphasis added). On its face, therefore, Section 224(f)(1) provides that if the duct, conduit, or right-of-way is owned or controlled by the ILEC, the ILEC is obligated to provide nondiscriminatory access to it. In *the Competitive Networks Order*, the Commission found that Section 224(f)(1) requires "non-discriminatory access to any pole, duct, conduit, or

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[6] *See e.g., Petition for Declaratory Ruling Regarding the Rights of Users (and CPE Vendors or Maintenance Personnel Acting on Users' Behalf) to Access Embedded Complex Intrasystem Wiring*, 101 FCC 2d 287 (1985).

[7] Section 251(b)(4) requires local exchange carriers to "afford access to the poles, ducts, conduits and rights of way of such carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224." Section 271 requires Bell Operating Companies ("BOCs") to offer nondiscriminatory access to poles, ducts, conduit and rights-of-way owned by the BOC as part of the 14-point checklist with which BOCs must comply prior to obtaining authorization to provide interLATA service.

right-of-way owned or controlled" by a utility "without qualification."[8] Further, the FCC concluded that this obligation is "not limited by location..."[9] Accordingly, Section 224(f)(1) requires nondiscriminatory access to ILEC duct, conduit, and rights-of-way leading to, and in, ILEC central offices. The Commission would be creating an unlawful exclusion if it were to determine that Section 224(f)(1) does not apply to duct, conduit, and rights-of-way leading to, and in, ILEC central offices.[10]

B. Application of Section 224(f)(1) to ILEC Central Office Facilities Is Consistent with the Overall Structure of the Act

Section 251(c)(6) permits collocation of equipment "necessary for interconnection or access to unbundled network elements ..."[11] Section 224(f)(1), on the other hand, contains no such limitation and grants access to "any" ILEC pole, duct, conduit, or right-of-way. Thus, Sections 251(c)(6) and 224(f)(1) establish independent, and different, rights of access to ILEC central offices.

The availability of two different access rights is consistent with the overall structure of the Act. Sections 251(c)(6) and 224(f)(1) are intended to solve different, albeit overlapping problems. Section 251(c)(6) is intended primarily to solve the specific problems associated with

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8 *Promotion of Competitive Networks in Local Telecommunications, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Review of Sections 68.104, and 68.213 of the Commissions Rules*, WT Docket No. 99-217, CC Dkt Nos. 96-97 and 88-57; First Report and Order and FNPRM in WT Docket No. 99-217, Fifth Report and Order in CC Docket No. 96-98 and Fourth Report and Order in CC Docket No. 88-57, FCC 00-377 (Rel. Oct. 25, 2000), at para. 80. ("*Competitive Networks Order*").

9 *Id.* para. 76.

10 Section 224(f)(2), 47 U.S.C. Section 224(f)(2), sets forth the only exception to this obligation: it permits a utility providing electric service to deny access to its poles, ducts, conduit or rights-of-way where there is insufficient capacity or for reasons of safety or reliability. This exception, which has been extended by the Commission to telephone companies, does not excuse the facility owner from a requirement to expand the available capacity or otherwise make adjustments necessary to ensure safety and reliability in order to accommodate a request for access.

11 47 U.S.C. Section 251(c)(6).

exchanging traffic and accessing UNEs. Section 224 is intended to solve a more general problem - the prohibitive expense associated with duplicating the infrastructure (poles, ducts, conduits, rights-of-way) needed to extend facilities to new customers. That CFPs are attempting to provide service to CLECs that are exercising their rights under Section 251(c)(6) does not in any way eliminate the problem Section 224 is intended to solve. To the contrary, because it would be impossible for a CFP to build its own ducts and conduit within a central office, the logic of applying Section 224 to ILEC central office facilities under these circumstances is compelling.

IV. APPLICATION OF SECTION 251(B)(4) AND SECTION 224(F)(1) OBLIGATIONS TO ILEC CENTRAL OFFICES WOULD SERVE THE GOALS OF THE ACT

The Telecommunications Act of 1996 was intended to establish "a pro-competitive, deregulatory national policy framework" designed to "promote competition and reduce regulation ... to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[12]

Determining that CFPs and other telecommunications carriers may access ILEC central office duct, conduit, and rights-of-way would help achieve these goals by permitting CFPs to provide competitive transport and other services to CLECs in the most efficient, and, in many cases, the only economically feasible manner possible. Granting CFPs the right to bring fiber directly into central offices will reduce the expense and time required for a CLEC to expand the

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[12] S. Conf. Rep. No. 230, 104th Cong. 2d Sess. 1 (1996). In implementing the statute, the Commission has the responsibility to adopt rules that will implement most quickly and effectively the national telecommunications policy embodied in the Act. *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286, rel. July 2, 1996.

number of central offices in which it operates. The availability of alternative transport facilities will enable CLECs to provide service to more consumers at lower prices. In addition, CFPs, as smaller and more flexible companies, are generally better positioned than ILECs to bring the newest technologies to their customers, which can facilitate provision of innovative and improved quality services to the public. Conversely, requiring CFPs to connect with CLECs only outside of ILEC central offices would limit CLECs to obtaining transport from the ILEC or constructing new facilities to a meet point with the CFP. The first of these options is antithetical to the competitive principles underlying the Act, while the second would impose on CLECs and CFPs the unnecessary and exorbitant costs of extending interconnection facilities to geographically dispersed locations around a central office. The ILEC central office remains one of the quintessential "bottleneck" facilities that CLECs, and in turn CFPs, must access in order to realistically be able to provide competitive services. Accordingly, apart from the direct mandate of the statute, the Commission should determine that CFPs may access ILEC duct, conduit, and rights-of-way pursuant to Sections 251(b)(4) and 224(f)(1) in order to promote the pro-competitive goals of the Act.

V. ILEC FACILITIES LEADING TO, AND IN, ILEC CENTRAL OFFICES USED TO HOUSE, RUN, OR HOLD WIRING CONSTITUTE "DUCT" AND "CONDUIT" SUBJECT TO SECTION 224 OBLIGATIONS

ILECs own and control a rich fabric of facilities leading to, and in, ILEC central offices that are used by the ILEC to house, run, and support wiring, cable, and transmission facilities. Without this, ILECs could not extend wiring and transmission facilities to, and in and around, the interior of central offices that are necessary to provide their various telecommunications services.

Some of these facilities consist of below- or above-ground vaults, pipes, and tubes of various dimensions in which wires are placed. In other cases, especially inside the central

office, ILECs use a variety of distribution systems to extend wiring in and around the central office. In some of these systems, wiring is not completely enclosed in pipe or tubes but instead is held in place by racks or clips or straps placed at various intervals along the run of wiring. Attachments A, B, and C to this petition present photographs of wiring distribution systems comprised of racks, pipe, and other means for distributing wiring throughout a central office or other building.

All of these wiring distribution systems achieve the same purpose of housing wiring, but are different based on the environment in which they are used. Thus, in central offices it may not be necessary for wiring to be installed in pipe because it is not exposed to the elements and because there is a lesser risk of harm to the facilities, and no risk to consumers. Congress intended that Section 224(f)(1) provide telecommunications carriers access to "bottleneck" facilities, in addition to other ILEC facilities. These wiring systems, especially those in the central office, retain the character of bottleneck facilities, regardless of the particular wiring mechanism used. Therefore, it would make little sense - - and would frustrate the fundamental access rights that Congress intended to establish in Section 224(f)(1) - - to precondition those rights on an ILEC's choice of wiring distribution systems. Accordingly, the Coalition requests that the Commission determine that all of such systems, and, indeed, any system used by ILECs to house, hold, or run wiring in central offices, constitute duct and conduit within the meaning of Section 224(f)(1).

In this connection, the Commission's definitions of "duct" or "conduit" are broad enough to encompass the full range of wiring distribution systems used in central offices. Section 1.1401(i) of the Commission's rules defines "conduit" as "a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed." The clips, straps,

or racks used by ILECs, in some instances, to hold wiring in central offices constitute "structures." The Commission initially defined conduit as a pipe.[13] That it later changed the definition to "structure," shows that the Commission intended the definition to be sufficiently flexible to encompass anything in which wiring can be installed. Therefore, straps, clips, and racks used to hold and run wiring constitute a "conduit" within the meaning of Section 1.1401(i) of the Commission's rule.

Similarly, the Commission's rules define "duct" as a "single enclosed raceway for conductors, cable and/or wire." "Raceway" is not defined in the Commission's rules, but has been defined as a "metal or plastic channel used for loosely holding electrical and telephone wires in buildings."[14] Thus, "raceway," as used in the Commission's rules is broad enough to encompass wire distribution systems using straps, clips, or racks instead of pipes because a system of straps, clips, or racks forms a "channel" for holding telephone wires in the same way as pipe or tubes. Section 1.401(k) envisions that the raceway is "enclosed." The Commission should determine that it is not necessary for the raceway to be enclosed in the sense of being entirely covered. Rather, the wiring is "enclosed" when it is held in place by whatever wire distribution method the ILEC employs. The Coalition requests that, in addition to tubes or pipes, the Commission determine that a system of racks, clips or straps holding wiring in an ILEC central office constitutes a "duct" within the meaning of Sections 1.401(k) of the Commission's rules.

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[13] Initially, the Commission defined conduit as "a pipe placed in the ground in which cable and/or wires may be installed. *Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777 (1998)("*Pole Attachment Order*"). This was later amended to be defined in the current rule as a "structure ... usually placed in the ground." *Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 6523 (2000).

[14] Newton's Telecom Dictionary, 14th Edition, Flatiron Publishing, 1998.

The Commission also should clarify that it is not necessary under the Commission's definitions of conduit and duct for ducts always to be placed in conduit. The Commission should determine that while conduits may contain ducts, ducts or raceways may hold wiring without being in conduits and that conduits may hold wiring without containing any ducts. As a general matter, the Commission should determine that its rules defining duct and conduit do not identify or establish the entire universe of wire distribution systems that telecommunications carriers may access pursuant to Section 224(f)(1). Rather, those rules provide an initial operational identification of some ILEC facilities that are subject to Section 224(f)(1) obligations without intending to identify every ILEC facility that could constitute a duct or conduit. The Commission should determine that any systems used by ILECs to house, run, or support wiring leading into, or in, ILEC central offices constitute duct and conduit within the meaning of Section 224(f)(1).

VI. ILEC CENTRAL OFFICES CONTAIN RIGHTS-OF-WAY SUBJECT TO SECTION 224(F)(1) OBLIGATIONS

In the *Competitive Networks Order*, the Commission determined that rights-of-way, in the context of buildings, include "at a minimum, defined areas such as ducts or conduit that are being used or have been specifically identified for use as part of a utility's transportation and distribution network."[15] Further, the Commission concluded that "a right-of-way exists within the meaning of Section 224, at a minimum, where (1) a pathway is actually used or has been specifically designated for use by a utility as part of its transmission and distribution network and (2) the boundaries of that pathway are clearly defined, either by written specification or by an

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[15] *Competitive Networks Order* at Para. 76.

unambiguous demarcation."[16] The Commission also found that "where a utility uses its own property in connection with its transmission or distribution network in a manner that would trigger the obligations of Section 224 if it had obtained a right-of-way from a private landowner, we conclude that it should be considered to own or control a right-of-way within the meaning of section 224." [17] The Coalition requests that the Commission determine that these findings also apply to "pathways" used to run wiring and transmission facilities in ILEC central offices.

The Commission also should determine that any wiring or transmission facilities in ILEC central offices extending from or to switches is distribution plant. This is a reasonable result because ILEC transmission facilities and wiring running from switches in central offices are the beginning of distribution plant carrying telecommunications signals throughout the ILEC network. Since wiring in central offices can be considered to be distribution plant, all of the Commission's determinations in the *Competitive Networks Order* regarding pathways constituting rights-of-way subject to Section 224(f)(i) are applicable to ILEC central offices.

However, the Commission should determine that pathways are rights-of-way subject to Section 224(f)(1) regardless of whether it considers wiring inside ILEC central offices to be distribution plant. Assuming that this wiring is not distribution plant, it is noteworthy that the Commission's limitation of its findings in the *Competitive Networks Order* to ILEC distribution plant nevertheless was carefully crafted to extend only so far as necessary to address whether Section 224(f)(1) obligations extended to multitenant buildings ("MTEs"). The Commission interpreted Section 224(f)(1) given the facts presented and the subject matter of that phase of that proceeding – whether ILECs were required to provide CLECs nondiscriminatory access to ducts,

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[16] *Id.* at Para. 82

[17] *Id.* at Para. 83.

conduit, and rights-of-way owned and controlled by the ILEC in MTEs. Thus, the Commission went no further than finding that rights-of-way under Section 224(f)(1) may exist in ILEC distribution plant. The Commission was careful to add that its finding that Section 224(f)(1) obligations applied to ILEC distribution plant was a finding that these obligations applied under that section "at a minimum."[18] Thus, the Commission carefully left open for a future determination that rights-of-way for purposes of Section 224(f)(1) exist in ILEC central offices even if facilities in the central office are not considered to be distribution plant. Accordingly, the Commission may determine in response to this petition that rights-of-way within the meaning of Section 224(f)(1) exist in ILEC central offices wherever defined pathways are used to run wiring, without in any respect contradicting the *Competitive Networks Order,* even if wiring in ILEC central offices is not considered to be distribution plant.

The Commission should consider pathways inside ILEC central offices to be rights-of-way that CFPs and other telecommunications carriers may access pursuant to Section 224(f)(1) even if such wiring is not distribution plant, because, as noted, the obligations of Section 224 apply regardless of location and because access by CFPs to these pathways would promote the Act's goals for all of the reasons stated above in Section IV.

VII. CFPs MAY ACCESS CENTRAL OFFICE DUCT, CONDUIT AND RIGHTS-OF-WAY WITHOUT COLLOCATING UNDER SECTION 251(C)(6)

Under Section 251(c)(6), ILECs must permit collocation of equipment necessary for interconnection or access to UNEs at the premises of the local exchange carrier. ILECs argue that under Section 251(c)(6), requesting carriers are limited to collocation for the purpose of

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[18] *Competitive Networks Order* at para. 76

direct interconnection or access to the UNEs of the ILEC.[19] However, Sections 251(b)(4) and 224(f)(1) do not contain any such limitation. Rather, as the Commission has determined, those sections permit access to duct and conduit owned or controlled by the ILEC "without qualification."[20] For all the reasons discussed above, CFPs and other CLECs may access duct, conduit and rights-of-way in, and leading to, ILEC central offices under Sections 251(b)(4) and 224(f)(1). Therefore, under those sections, CFPs and CLECs may obtain such access irrespective of whether they will interconnect with, or access UNEs of, the ILEC. The Coalition requests that the Commission specifically determine that, under Sections 251(b)(4) and 224(f)(1) of the Act, CFPs and other telecommunications carriers may access ILEC duct and conduit in, and leading to, the central office for the purpose of providing service to CLECs collocated there irrespective of whether the CFP will interconnect with, or access UNEs of, the ILEC.

VIII. CLECs COLLOCATED IN ILEC CENTRAL OFFICES UNDER SECTION 251(C)(6) MAY ACCESS ILEC CENTRAL OFFICE DUCT AND CONDUIT TO CROSS-CONNECT WITH OTHER COLLOCATED CLECs

As discussed, it is not a precondition for obtaining nondiscriminatory access to ILEC duct, conduit, or rights-of-way in the central office that the telecommunications carrier collocate in the ILEC central office pursuant to Section 251(c)(6), or directly or indirectly interconnect with the ILEC, or access UNEs of the ILEC. On the other hand, there is no reason under the statute why CLECs collocated under Section 251(c)(6) may not also employ their rights under Sections 251(b)(4) and 224(f)(1) to access duct and conduit in the central office. Therefore, pursuant to Section 224(f)(1), CLECs collocated in ILEC central offices may access duct and

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[19] See SBC Reply Comments, CC Docket No. 98-147 filed November 14, 2000, pp. 13, 24; BellSouth Reply Comments, CC Docket No. 98-147, filed November 14, 2000, p. 4-5; Verizon Reply Comments, CC Docket No. 98-147, filed November 14, 2000, pp. 4, 6.

[20] *Competitive Networks Order*, para. 80.

conduit for the purpose of interconnecting with other collocated CLECs. In this regard, Sections 251(b)(4) and 224(f)(1) provide an alternative statutory basis for CLEC cross-connection in ILEC central offices, in addition to CLECs' right to cross-connect under Section 251(c)(6). The Commission currently is considering in the *Collocation Remand Proceeding* the extent to which CLECs may cross-connect pursuant to Section 251(c)(6).[21] The Coalition requests that the Commission specifically determine that CLECs may cross-connect in ILEC central offices pursuant to Sections 251(b)(4) and 224(f)(1).

IX. DARK FIBER MAY BE INSTALLED IN ILEC CENTRAL OFFICE DUCT AND CONDUIT

In the *Pole Attachment Order*, which adopted rules implementing the amendments to Section 224 enacted in the Telecommunications Act of 1996,[22] the Commission determined that telecommunications carriers may include dark fiber as part of host attachments.[23] This was affirmed by the United States Court of Appeals for the 11th Circuit.[24] The court noted that dark fiber places no more burden on a pole than do the host attachments because fiber is merely bare capacity included within the host attachment at the time the cable is attached to the pole. In addition, the court presumed that in determining the rent for the host attachment, the Commission and the utility would account for the dark fiber within the attaching host.[25] Accordingly, the court affirmed the Commission's determination that utilities must permit

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21 *See* n. 3, *supra*.

22 Pub. L. No. 104-104, 110 Stat. 61, 149-151.

23 *Pole Attachment Order*, 13 FCC Rcd 6777, 6811 (1998).

24 *Gulf Power Company v. FCC*, 208 F. 3d 1263 (11th Cir. 2000). *cert. granted on other grounds*, 121 S.Ct. 879 (January 22, 2001).

25 *Id.* 208 F. 3d at 1279.

attachment of dark fiber as part of a host attachment. The Coalition requests that the Commission determine that telecommunications carriers may include dark fiber as part of host attachments in ILEC duct, conduit, and right-of-way leading to, and in, ILEC central offices. The Commission should go a step further, however, and determine that telecommunications carriers may install dark fiber as separate attachments. This is reasonable because ILECs would be subject to compensation for any such attachments.

X. "ACCESS" TO DUCT, CONDUIT, AND RIGHTS-OF-WAY INCLUDES THE RIGHT TO PLACE EQUIPMENT ON ILEC PREMISES

Section 224(f)(1) requires ILECs to provide to telecommunications carriers "nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[26] Under this section, telecommunications carriers may install wiring and cabling. However, in order to effectively make use of this right, telecommunications carriers must also be able to install, at a minimum, equipment associated with wiring and cabling. For example, telecommunications carriers must be able to install connectors between lengths of wiring and cabling, signal regenerators to assure adequate signal strength, and power supplies adequate to operate electronics attached to wiring and cabling. In fact, telecommunications carriers and cable operators currently are installing equipment pursuant to Section 224(f)(1) in utility ducts, conduit, and rights-of-way, including cabinets and vaults to house some of this equipment.

The Coalition specifically requests that the Commission determine that, as part of their rights to nondiscriminatory access to ILEC duct, conduit, and rights-of-way, CFPs may install connector blocks and distribution frames at a convenient location in the ILEC central office. This equipment is integral to installation of wiring in that it permits connection of subsequent

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[26] 47 U.S.C. Section 224(f)(1).

runs of wiring. It is functionally identical to the types of equipment that telecommunications carriers already install in ILEC duct, conduit, and rights-of-way pursuant to Section 224(f)(1) in that it permits connection of two segments of wiring. The alternative to this determination would be that CFPs must construct new access facilities each time a CLEC in the central office requests service from the CFP and additionally run separate continuous lengths of fiber to each CLEC in the central office from some point outside of the central office. This not only would impose unnecessary and prohibitive costs on the CFP that could thwart the provision of competitive transport services, but also would contravene standard industry technical practices, which permit, and use, connector blocks or distribution frames between segments of wiring.

The Coalition stresses that this would not result in any unreasonable occupation of ILEC property. As noted, Verizon already permits CFPs to extend wiring into its central offices and install a distribution frame.[27] This is persuasive evidence that this practice is reasonable for ILECs. And, of course, ILECs will be compensated for this use of their ducts, conduit, and rights-of-way under applicable Section 224 pricing rules or on a case-by-case basis.[28] Accordingly, the Commission should determine that CFPs and other telecommunications carriers may, under Sections 251(b)(4) and 224(f)(1), install equipment, including connector blocks and distribution frames associated with installation of wiring and cabling in ILEC central offices.

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[27] *See* n. 2, *supra*.

[28] In the *Competitive Networks Order*, the Commission noted that existing pricing formulas for pole, duct, conduit, and rights-of-way do not appear to be directly transferable to the context of inside buildings. The Commission stated that to the extent the existing formulas do not apply to inside building situations, that it would determine reasonable and just compensation on a case-by-case basis. The Commission stated that it would consider initiating a rulemaking proceeding to establish rate formulas for in-building attachments in the future if it provides necessary or efficient to do so. *Competitive Networks Order*, para. 91.

XI. SECTION 224(F)(1) APPLIES TO "MANHOLE ZERO"

As discussed, Section 224(f)(1) applies to "any" duct or conduit owned or controlled by the ILEC. Obviously, the system of manholes and underground transmission facility distribution systems leading to the central office constitute duct or conduit. Therefore, that Section applies to "manhole zero," the term used in the industry for the manhole nearest the central office.

It is the Coalition's experience, however, that not all ILECs view "manhole zero" as a facility subject to Section 224(f)(1). Moreover, ILECs affording access to "manhole zero" often do so on a basis that is potentially unreasonably discriminatory. Some ILECs designate a single "manhole zero" for a central office to which telecommunications carriers should extend wiring. In other instances, the ILEC will designate multiple manholes. In many instances, it is not clear what the ILEC practices are in terms of providing access to "manhole zero."

The Coalition requests that the Commission specifically determine that "manhole zero" is subject to the nondiscriminatory access obligation of Section 224(f)(1). Further, the Commission should put ILECs on notice that they should establish reasonable practices concerning designation of, and access to, manholes nearest the central office, including advance notice of these practices.[29] The Commission should state that it will exercise its rulemaking authority to mandate specific practices in this area if ILECs do not otherwise meet their obligation under the Act.

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[29] Of course, telecommunications carriers under Section 224(f)(1) have a right to access "any" manhole leading to the central offices. ILECs may established preferred manholes for access to central offices, but may not limit telecommunications carriers' rights to access any such manhole.

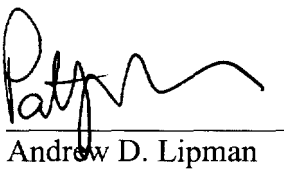
XII. THE COMMISSION SHOULD GRANT THE PETITION ON AN EXPEDITED BASIS

The Coalition additionally requests that the Commission consider and grant this petition on an expedited basis. As discussed, Section 224(f)(1) provides that ILECs must provide CFPs access to central office duct, conduit, and rights-of-way. At the same time, ILECs for the most part are not permitting CFPs pursuant to those statutory provisions to extend fiber into ILEC central offices to connect with CLECs there or to place associated fiber distribution frames in the central office. Furthermore, many CLECs would like to obtain the benefits of obtaining competitive fiber-based services from CFPs but are frustrated in their ability to do so because of ILEC policies in this area. This, in turn, delays the benefits to consumers, including greater service choices and lower prices, that provision of fiber-based competitive services to CLECs could bring. Accordingly, the Commission should consider and grant this petition on an expedited basis.

XIII. CONCLUSION

For the foregoing reasons, the Commission should promptly grant this petition.

Respectfully submitted,



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March 15, 2001

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Declaratory Ruling has been served by hand delivery to the persons on the attached list on this 15th day of March, 2001.

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ATTACHMENT A

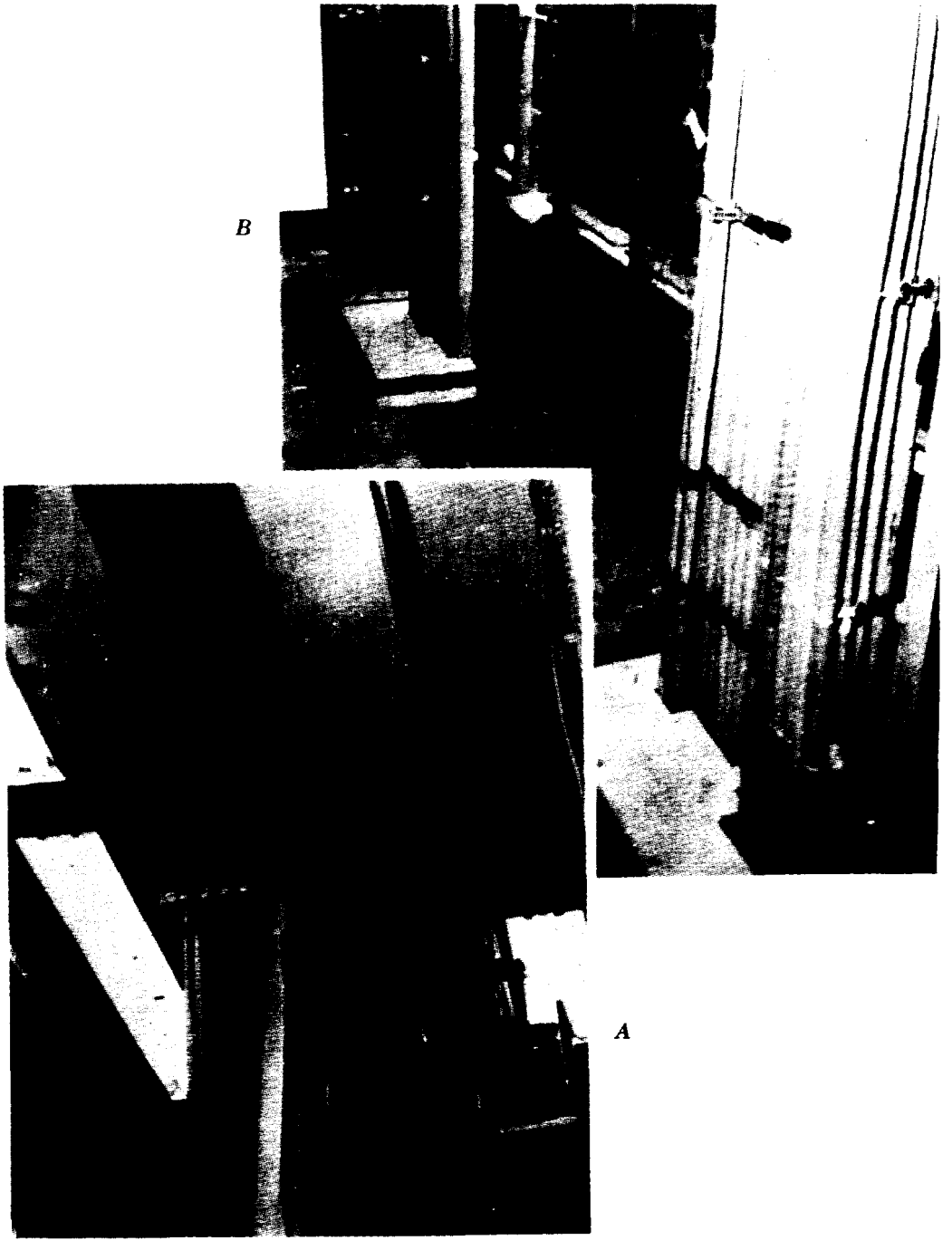

Figure 12-16. Cabling in telephone equipment buildings. *A*, routed above equipment frames; *B*, routed between floors.

Source: **Engineering and Operations in the Bell System, Bell Telephone Laboratories, Second Edition 1982-1983, Library of Congress Catalog Card Number 83-72956, p. 562**

ATTACHMENT B

Are you ready?

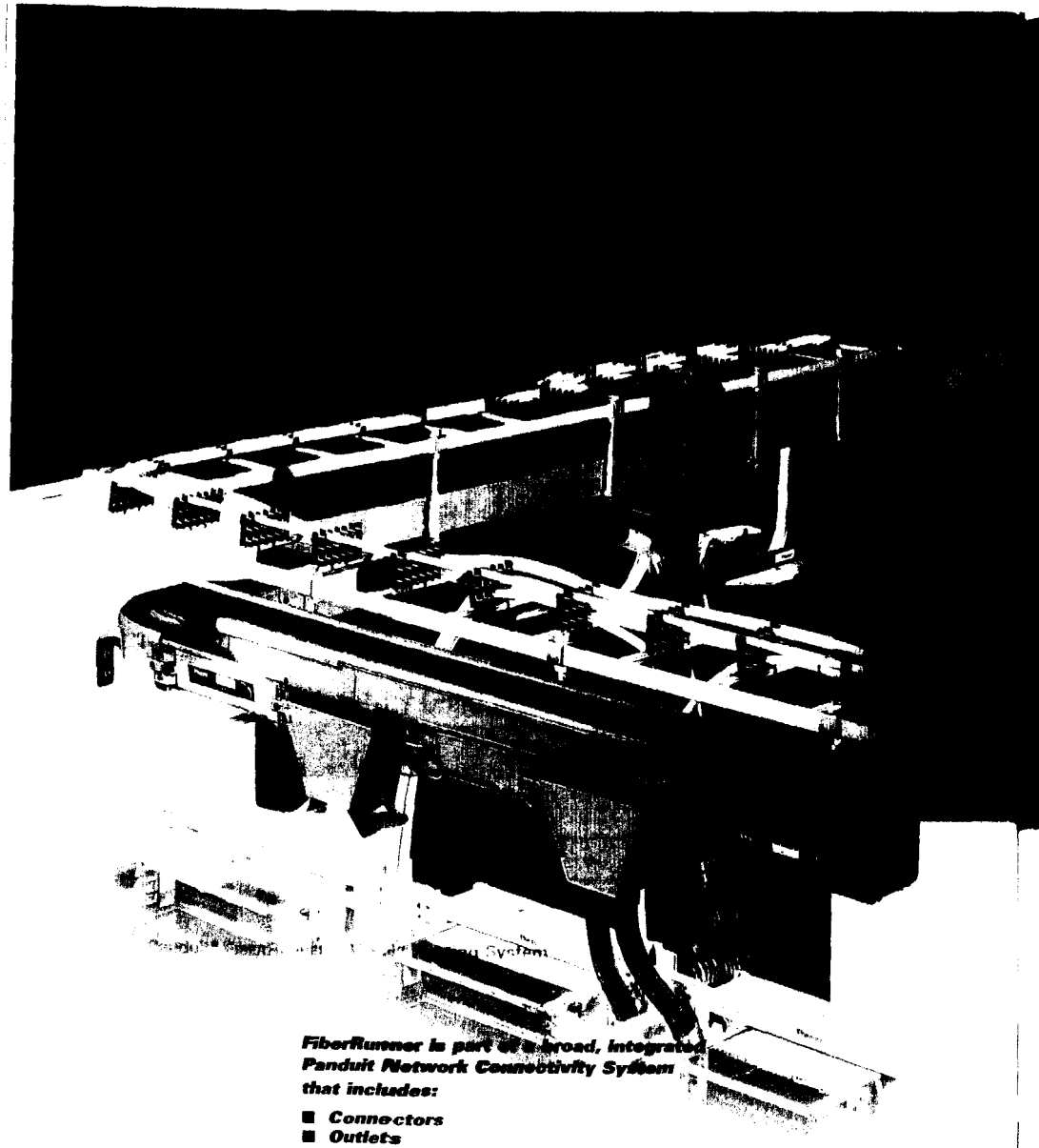

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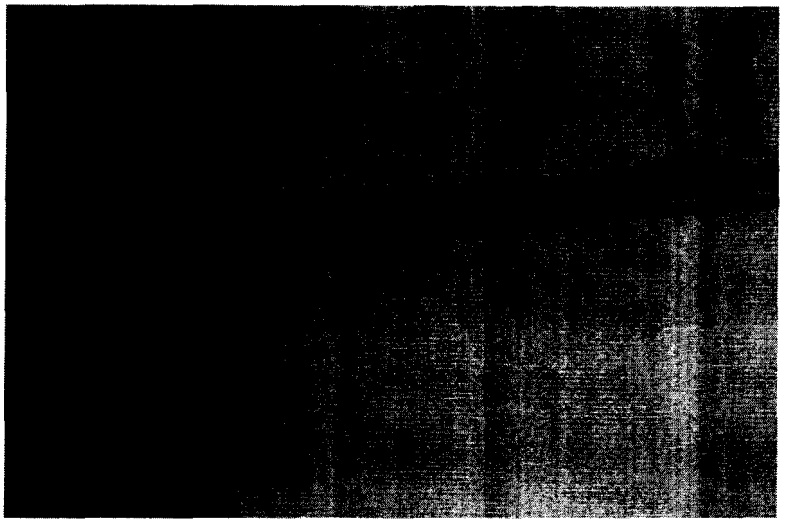
Photo img3_046



Item information

Caption:	On the left three Ethernet patch cables can be seen. Toward the top and right are conduits which cary various data and telephone cables throughout the building.
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Item:	Photo img3_046 without textual material
Keywords:	photo img3_046, ethernet, patch cable, conduit
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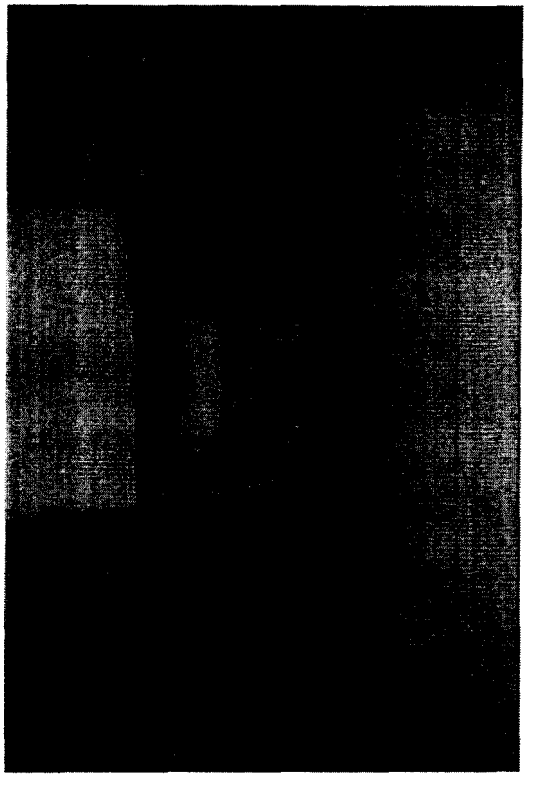
Photo img3_047



Item information

Caption:	A wiring closet containing, from top to bottom, three patch panels, two Ethernet hubs, and an Ethernet switch.
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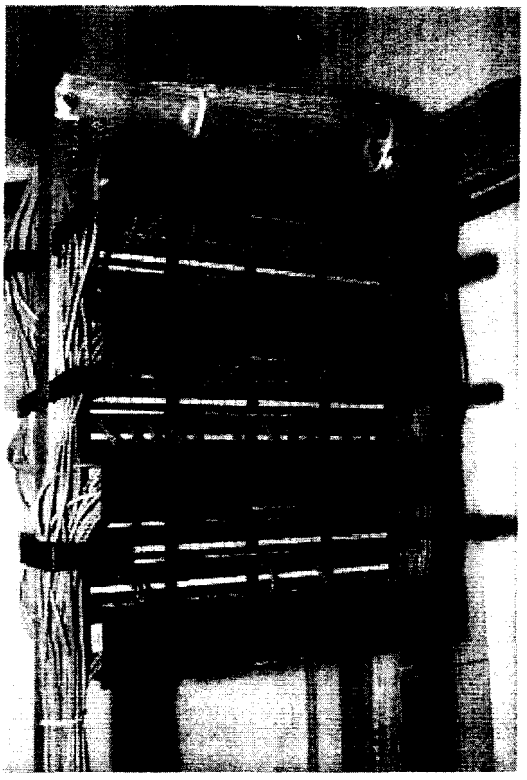
Photo img3_048



Item information

Caption:	A closeup of the three Ethernet patch cables. The blue cabling is twisted pair Ethernet cable.
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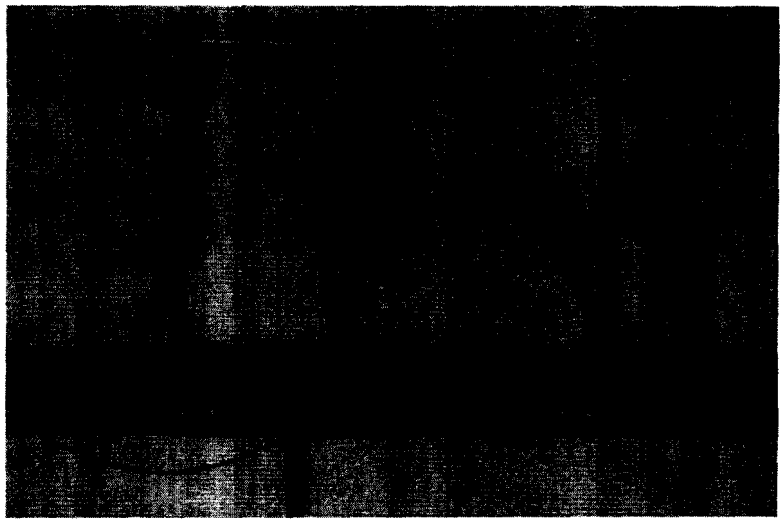

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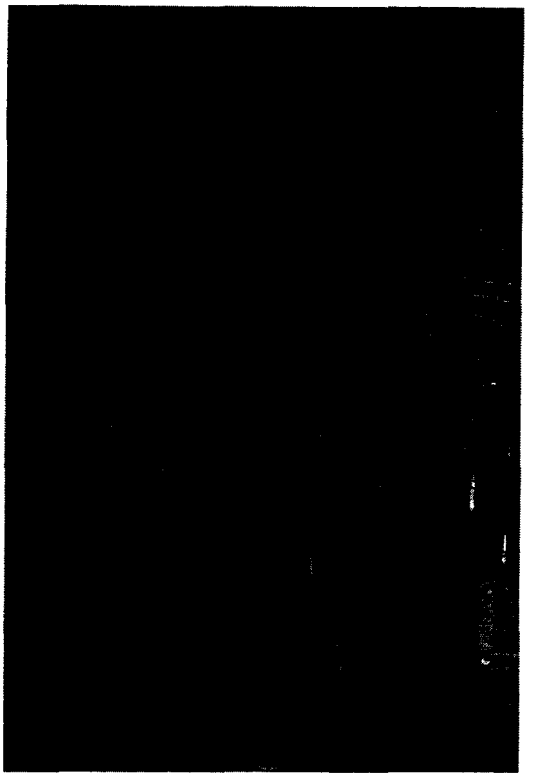
Photo img1_064



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